



**A Publication of the
FUNERAL DIRECTORS EXAMINING BOARD**

Volume 9, No. 2

November, 1999

Governor Thompson Appoints New Board Member

On August 14, 1999, the Board welcomed Bonnie Gift as replacement for former Board member, Diane Pratt. Ms. Gift, who resides in Fennimore, WI, is a public member of the Board. She has been a caregiver. Governor Tommy Thompson appointed Ms. Gift to an initial term to expire July 1, 2000, and a full four-year term to expire July 1, 2004. We welcome Ms. Gift to the Board.

Aftermath of Court of Appeals Decision

After the ruling of the Court of Appeals, District IV, that Service Corporation International (SCI) was in violation of Wisconsin's joint ownership law, the Funeral Directors Examining Board denied all of the applications for funeral establishment permits, submitted by SCI-owned

funeral establishments. The applicants subsequently requested a hearing on each denial. The Board, with the assistance of Assistant Attorney General Bruce Olson, continued to negotiate with SCI and agreed to delay making a decision regarding the granting of hearings until October 31, 1999. SCI informed the Board that it was well along in negotiations with a potential purchaser of its cemeteries. Therefore, the Board was willing to resolve the pending matters without causing undue disruption to funeral or cemetery business and consumers in Wisconsin.

The Board and SCI stipulated that, no later than October 31, 1999, SCI and all SCI-affiliated companies shall sever any ownership and other operational interests in any and all cemeteries within the State of Wisconsin by selling such interests to an unrelated third party.

**THE WISCONSIN FUNERAL DIRECTORS
EXAMINING BOARD**

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Furthermore, if SCI completes the sale or disposition of its interests in any and all Wisconsin cemeteries by October 31, 1999, the funeral establishment permit for each of the SCI-affiliated funeral establishments will be promptly granted or renewed until May 31, 2001. If SCI has not completed the sale or disposition of its interests in any and all Wisconsin cemeteries by October 31, 1999, the funeral establishments that are owned by SCI or an SCI-affiliate company as of that date will surrender their existing permits, waive their right to appeal or hearing on the denial of their applications for new funeral establishment permits or renewal of existing permits, and will cease all operations, effective November 1, 1999.

At the time of writing this article SCI was still negotiating with a potential buyer of its cemeteries and the deadline for additional action by the Board was rapidly approaching.

The SCI-affiliated **funeral establishments** are:

- Pedersonn-Volker Funeral Chapel (Chippewa Falls)
- Mothen-Bell & Sons Funeral Home (S. Milwaukee)
- Fuller-Speckien Funeral Home (Eau Claire)
- Schramka Funeral Home (Cedarburg)
- Schramka-Nero Funeral Home (Cudahy)
- Schramka-Matenaer Funeral Home (Hartford)
- Schramka Funeral Home (Menomonee Falls)
- Schramka Funeral Home (Milwaukee)
- Schramka Funeral Home (Milwaukee)
- Schramka-Rembowski Funeral Home (St. Francis)
- Schramka-Densow Funeral Home (Theinsville)
- Steinhaus Funeral Home (Montello)
- Steinhaus Funeral Home (Westfield)
- Rosman-Uehling-Kinzer Funeral Home (Beloit)
- F. J. Borgwardt Sons Funeral Home (Hales Corners)
- F. J. Borgwardt Sons Funeral Home (Milwaukee)
- John G. Borgwardt Funeral Home (West Allis)
- Bruch Funeral Home (Kenosha)
- Strouf-Kniewel Funeral Home (Racine)

The SCI-affiliated **cemeteries** are:

- West Lawn Memorial Park (Racine)
- Lake View Memorial Park (Oshkosh)
- Appleton Highland Memorial Park, Inc. (Appleton)
- Nicolet Memorial Gardens Association (Green Bay)

Even though 14 renewal applications were denied, the funeral establishments had the legal right to operate until the owners had exhausted all rights to due process.

Applicants for an original credential also have due process rights; however, they, generally, are not permitted to practice until a credential has been issued.

Legal Counsel's Opinion Regarding Funeral Directors Serving on A Cemetery Board

Legal Counsel, Jacquelynn Rothstein, recently prepared a more formal opinion about joint ownership issues which have been addressed in previous issues of the Regulatory Digest. Nothing has changed.

Ms. Rothstein stated that cemetery authorities are prohibited from having agents who have *any* ownership, operation, or other financial interest in a funeral establishment. In addition, the law prohibits an agent of a cemetery from *directly or indirectly* receiving or accepting any commission, fee, remuneration, or *benefit of any kind* from a funeral establishment, or from an owner, an employee, or an agent of a funeral establishment. Individuals who serve on the governing boards of cemeteries, including funeral directors, are considered agents of the cemetery. Because a funeral director has obvious ties to the operation of a funeral home and may well have ownership or other financial interests in a funeral establishment, he or she would be prevented from serving on a cemetery board. Furthermore, a funeral director, acting as an agent of a cemetery, through a board position or otherwise, is similarly prevented from receiving or accepting, either directly or indirectly, any commission, fee, remuneration, or benefit of any kind from a funeral establishment, or from any owner, employee, or agent of a funeral establishment. Although a funeral director, acting in his or her capacity as an agent for a cemetery, may not be receiving direct benefits, it is important to note that "indirect" benefits and "benefits of any kind" are also prohibited. "Indirect benefits" and "benefits of any kind" may include intangibles as goodwill or business contacts. Accordingly, as long as such benefits inure to a funeral director, he or she is prevented from serving as an agent of a cemetery, regardless of whether he or she is receiving a direct form of payment or compensation.

Legislative Update

Certificates in Good Standing

The Board and the Department have been working on legislation to correct some problems relating to certificates in good standing.

Meanwhile, the Board has directed licensing staff to correspond with the 119 persons who hold a current Certificate in Good Standing and to explain the current requirements.

Chapter 11 Bankruptcy By the Loewen Group

The Department of Regulation and Licensing has been carefully monitoring the reorganization of The Loewen Group, Inc., under Chapter 11. Department auditors are making unannounced survey audits of Loewen cemeteries and have been ascertaining that trust funds are being deposited and held, as required by Wisconsin law.

The Loewen Group has assured the State of Wisconsin and other states that it will do the following:

- 1) Continue to comply with all state and provincial statutes and accompanying regulations that affect its business.
- 2) Fund pre-need trust accounts in accordance with state and provincial statutes and regulations.
- 3) Maintain the integrity of existing trust accounts and seek withdrawals from trusts pursuant to state and provincial regulations.
- 4) Continue to work with the state in addressing all compliance issues.

Board's Position on Cemetery Law Changes

The Board gave a thumbs down on several changes to the cemetery laws which Secretary Marlene Cummings asked the Board to consider at one of its meetings. The Board said it could not support the following proposal: 1) creation of a joint cemetery and funeral director's board; 2) a reduction in the trusting requirement for burial trusts from 100% to 40% and 3) the creation of an exception to the joint ownership

law to permit an owner, employee or agent of a funeral establishment to be a director of a cemetery association or corporation or to assist a cemetery authority to locate burial spaces and reserve them for purchase, provided that the owner, employee or agent of the funeral establishment does so without any fee or remuneration.

Funeral Directors Apprentice Advisory Committee

The advisory committee has conducted 5 meetings and has made progress reports to the Funeral Directors Examining Board. The committee anticipates holding its final meeting on October 1, 1999, and making its final report to the Board at the Board meeting on November 16, 1999.

Revisions to Solicitation Rule

The revisions to FD 6.10, Wis. Admin. Code, became effective on August 1, 1999. This rule now reads as follows:

FD 6.10 Solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

(1) **AUTOMATED TELEPHONE CALLS.** A funeral director, owner of a funeral establishment, or agent may only initiate a telephone call using an automated telephone dialing system or an artificial or prerecorded voice system for the purpose of selling or soliciting a burial agreement funded by the proceeds of a life insurance policy when calling a residential or business telephone line, provided that the funeral director, owner of a funeral establishment, or agent obtains the prior express written consent of the party to be called.

(2) **LIVE-VOICE TELEPHONE CALLS.** A funeral director, owner of a funeral establishment, or an agent may initiate a telephone call by live-voice for the purpose of selling or soliciting a burial agreement funded with the proceeds of a life insurance policy only if all of the following apply:

(a) A funeral director, owner of a funeral establishment, or agent sends written notice to the prospective purchaser at least 10 days in advance of the call, advising the prospective purchaser of all of the following:

1. The name of the funeral director, owner of a funeral establishment, or agent who will be calling, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.
2. That the call will only be made between the hours of 9:00 a.m. to 7:00 p.m. central time.

3. The specific reason for the call in no less than 12-point type.

4. That a prospective purchaser may call the person or entity upon whose behalf the call is being made to request that no call be made. This statement shall be in no less than 14-point, bold-faced type.

(b) The telephone caller immediately begins the conversation by providing the called party with the name of the funeral director, owner of the funeral establishment, or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

(c) The telephone caller records the name and telephone number of persons who request placement on a do-not-call list at the time the request is made and the caller agrees to make no further calls to a person who has requested placement on the list.

(d) A telephone call is only made to a prospective purchaser or the prospective purchaser's authorized representative, in a hospital, health care facility, elderly home or similar establishment, if the prospective purchaser or the prospective purchaser's authorized representative requests the call.

(e) A telephone call is only made to a prospective purchaser of a burial agreement funded by the proceeds of a life insurance policy whose death is imminent or appears to be imminent, if the prospective purchaser or the prospective purchaser's authorized representative requests the call.

(3) DOOR-TO-DOOR SOLICITATION. A funeral director, owner of a funeral establishment, or an agent may not contact a prospective purchaser of a burial agreement funded with the proceeds of a life insurance policy by door-to-door solicitation.

(a) Immediately provide the called party with the name of the funeral director, owner of a funeral establishment or agent, the name of the person or entity upon whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.

(b) Have a written policy available, upon demand, for maintaining a do-not-call list.

(c) Record the name and telephone number of persons who re-quest placement on the do-not-call list at the time the request is made. No further calls may be made to a person who has requested placement on the do-not-call list.

History: Cr. Register, October, 1997, No. 502, eff. 11-1-97; **renum. and am.** (1) (intro.) to be (1), (2) (b) (intro.), 1. to 4., to be (2) (a) (intro.), 1. to 4., r. (1) (a) to (c), (2) (a), (4) and (5), cr. (2) (b) to (e), r. and recr. (3), Register, July, 1999, No. 523, eff. 8-1-99.

Note. The shaded area of the official rule, printed above, appears to be a typographical error and was not intended to be part of the rule. The error will be corrected.

Regulation of Crematories

The Board anticipates receiving a proposal from Board member, Dan Densow, at the Board meeting on November 16, 1999. The Board would like to request a legislative draft sometime thereafter.

FTC Funeral Rule

The Federal Trade Commission has begun a review of its Trade Regulation Rule on Funeral Industry Practices. It has solicited comments on the overall costs, benefits and continuing need for the Funeral Rule. In addition, the Commission has sought comments on whether the rule should be modified to broaden its scope to include non-traditional providers of funeral goods or services, to revise and clarify the prohibition on casket handling fees, or to prohibit non-declinable funeral fees. The Funeral Directors Examining Board offered a very simple and straight-forward suggestion: simply amend the definition of "funeral provider" so it means "any person, partnership or corporation that sells or offers to sell funeral goods or funeral services to the public." The definition now says "funeral goods *and* funeral services."

Abbit Management Corp's Master Trust Program

Abbit Management Corp. and Norwest Banks requested the approval of the Funeral Directors Examining Board for a Master Trust Program that it has developed for the deposit of trust funds relating to burial agreements under s. 445.125, Wis. Stats. On August 11, 1999, the Board approved Abbit's Master Trust Program. Representatives of Abbit attended several board meetings, explained the features of the program and made a few changes before obtaining Board approval. Wisconsin funeral directors now have two master trust programs available to them, that of Abbit Management Corp. and that of the Wisconsin Funeral Directors Association.

Funeral directors and purchasers of preneed funeral products and services may now select from insurance policies, individual trusts or master trusts.

Funeral Homes Owned by Keystone Wisconsin, Inc.

We are providing you with this list of Wisconsin funeral establishments owned by Keystone Group Holdings, Inc., and Keystone of Wisconsin, Inc., so that you can follow the changes occurring in the funeral industry.

Anderson-Nathan Funeral Home (Hayward)
Koerpel Funeral Home (Hayward)
Dahl Funeral Home (Spoonerville)
Brown Funeral Home (Solon Springs)
Brown Funeral Home (Minong)
Hildebrand, Darton, Russ Funeral Home
(Rhineland)

Sale of Cemeteries

The June 1999 and November 1998 editions of the Regulatory Digest listed the sales or encumbrances of cemeteries that the Department approved. The following approvals took place since November 1998:

Valhalla Memorial Park Association was approved to sell the assets of Valhalla Memorial Park Cemetery in Milwaukee to Valhalla Memorial Gardens, Inc. Dated: 4/14/99

Wisconsin Memorial Park, Inc., operator of Wisconsin Memorial Park Cemetery in Brookfield, was approved to sell all its outstanding shares of stock to S. E. South Central, Inc, a wholly-owned subsidiary of Stewart Enterprises, Inc. Dated: 4/28/99

The Fort Howard Cemetery Association, operator of the Fort Howard Cemetery & Chapel Mausoleum in Green Bay, was approved to sell all of the assets of the association to the Fort Howard Memorial Park, Inc., a wholly-owned subsidiary of The Tribute Companies, Inc. Dated: 6/17/99

The Rest Haven Cemetery Association was approved to transfer ownership of the Rest Haven Garden Cemetery to the Town of Washington in Eau Claire County. Dated: 8/13/99

Disciplinary Actions

WILLIAM R. BEHLMAN, FUNERAL DIRECTOR
GARY F. KONRAD, FUNERAL DIRECTOR

OSHKOSH, WI

\$100 FORFEITURE EACH/\$200 COSTS

On 1/25/95 used letterhead with the name of a funeral director who was not licensed until 3/7/95. Effective 8/11/99. FD 2.05(2), 3.02(2) Case #LS9908112FDR

KENNETH R. ANDREWS, FUNERAL DIRECTOR EAST TROY, WI

SUSPEND 2 WEEKS/\$1000 COSTS

Engaged in misleading or deceptive conduct. Failed to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process. Suspension effective at the point when Andrews commences active practice. FD 3.02(9)(10). Case #LS9908111FDR

DIEGO CAMACHO, JR., FUNERAL DIRECTOR d/b/a STEIL CAMACHO FUNERAL HOMES DARLINGTON, WI

REPRIMAND/\$250 COSTS

Solicited in a manner that is a violation of the administrative code. Effective 8/11/99. FD 6.10(2) Case #LS9908113FDR

BENJAMIN BARBOUR, FUNERAL DIRECTOR EDGERTON, WI

SUSPENDED

Failed to comply with terms and conditions of a board order. Stay of suspension is denied and the suspension is reinstated. Effective 8/12/99.

Department of Regulation and Licensing
Funeral Directors Examining Board
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After dialing this number you are asked to press various extensions. For the following requests, please press numbers as noted:

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Whether A Person Is Licensed	Press 442
Application Processing and Requirements	Press 42

Visit the Department's Web Site

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Send comments to dorl@drl.state.wi.us

Copies of Regulatory Digest on the Web

See the Web site listed above.

Wisconsin Statutes and Code

Copies of the Wisconsin Statutes and Administrative Code Relating to Funeral Directors Regulation can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated November, 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

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